7-170

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 524.

THE UNITED STATES, APPELLANTS,

vs.

JAMES A. WHITE AND AUGUSTUS R. MONTGOMERY.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 14, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 524.

THE UNITED STATES, APPELLANTS,

vs.

JAMES A. WHITE AND AUGUSTUS R. MONTGOMERY.

APPEAL FROM THE COURT OF CLAIMS.

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1 *Petition. Filed June* 13, 1871.—*J. R.*

U. S. Court of Claims—December term, 1871.

JAMES A. WHITE AND AUGUSTUS R. MONTgomery
vs.
THE UNITED STATES. } No. 6349.

To the honorable Court of Claims:

The petition of James A. White, a citizen of New Orleans, Louisiana, and of Augustus R. Montgomery, a citizen of Trenton, State of New Jersey, with respect, represents:

That they were associated together in partnership in the year 1865 under the name of Montgomery & White, and that in New Orleans, La., in 1865, they engaged in a transaction in cotton as hereinafter set forth.

Petitioners aver that by the 8th section of an act of Congress of July 2d, 1864, it was enacted that it should be lawful for the Secretary of the Treasury, with the approval of the President, to authorize agents to purchase for the United States any produce of States declared in insurrection, at such places as should be designated therein, and at such prices as should be agreed on with the seller, not exceeding the market value thereof at the place of delivery, nor exceeding three-fourths of the market value thereof in the city of New York, at the latest quotations known to the agent purchasing, and under the authority of this act and in accordance therewith the Secretary of the Treasury, on the 24th day of September, 1864, with the approval of the President, of the same date, issued general regulations for the purchase of products of the insurrectionary States on government account, and, on the 9th of May, 1865, certain amended regulations relating to the same object.

Your petitioners show that, in pursuance of said regulations, the said firm of Montgomery & White sold to the United States and repurchased through O. N. Cutler, the purchasing agent of the United States, on the 23d day of June, 1865, one hundred and one bales of cotton of the class of "ordinary," weighing 40,060 pounds, and abandoned to the aforesaid purchasing-agent, for the use of the United States, one-fourth of said lot of 101 bales, to wit, twenty-five bales of cotton.

Your petitioners show that the said surrender of said twenty-five bales of cotton was illegally exacted of them and made by them in error, because, before said payment was made, to wit, on the 13th
2 of June, 1865, the President of the United States had annulled and removed all restrictions on trade east of the Mississippi River, as by law he had a right to do, and that thereby the said 8th section of the act of July 2d, 1864, became inoperative, and was repealed as regards the city of New Orleans, which lies east of the Mississippi River.

Your petitioners further represent, that they are advised and believe that the said O. N. Cutler, the aforesaid purchasing agent of the United States, regularly rendered his accounts to the Treasury Department, and that under the direction of the U. S. Government said cotton was shipped to the government agent at New York, through whom it was sold, and that the proceeds thereof were paid over into the Treasury of the United States.

And whereas, from the premises it appears that the Treasury of the United States has thus erroneously and illegally received the proceeds of said twenty-five bales of cotton, an implied obligation arises on the part of the United States to refund to your petitioners the proceeds

of said twenty-five bales of cotton, the amount whereof can only be ascertained by the accounts of the Treasury Department.

Wherefore your petitioners submit and pray that a decree may be rendered, declaring that they are entitled to recover from the United States said proceeds of said twenty-five bales of cotton.

Your petitioners further aver that they have at all times borne true allegiance to the Government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government.

LOUIS JANIN & SONS,
Solicitors for Claimants, Washington, D. C.

Address of A. R. Montgomery: Trenton, N. J.
Address of J. A. White: New Orleans, La.

James A. White, being duly sworn, deposes that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government; that no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof, or any interest therein, has been made, except as in the said petition stated: that the affiant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

JAMES A. WHITE.

Sworn to and subscribed before me this twentieth day of February, 1869.

N. LOEW, *U. S. Com.*

3 Augustus R. Montgomery, being duly sworn, deposes that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government; that no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof or any interest therein has been made, except as in said petition stated; that the affiant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

AUGUSTUS R. MONTGOMERY,
Of the late firm of Montgomery & White.

Sworn to and subscribed before me this twelfth day of June, 1871.
[SEAL.] R. C. BELVILLE,
Clk. U. S. Dist. Court and ex officio U. S. Commr.

4 In the Court of Claims of the United States, December term A. D. 1870.

JAMES A. WHITE AND AUGUSTUS R. MONTgomery
vs.
THE UNITED STATES. } No. 6349.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimants herein; and, not confessing the same, or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimants in the sum of the proceeds of twenty-five bales of cotton, says that they are not indebted to the said claimants in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimants have at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, denies the said allegation.

THOMAS H. TALBOT,
Assistant Attorney-General.

Filed August 11, 1871.

5 In the Court of Claims.

JAMES A. WHITE AND AUGUSTUS R. MONTgomery
vs.
THE UNITED STATES. } No. 6349.

At a Court of Claims held at the Capitol, in the city of Washington, the 17th day of April, A. D. 1876, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimants, and do order, adjudge, and decree that the said James A. White and Augustus R. Montgomery, claimants, do have and recover of and from the United States the sum of three thousand four hundred and forty-three dollars fifty cents ($3,443\frac{50}{100}$).

By the court.

A true copy of record.

6 In the Court of Claims of the United States, Dec. term, 1875.

JAMES A. WHITE AND AUGUSTUS R. MONTgomery
vs.
THE UNITED STATES. } No. 6349.

From the judgment rendered in the above-entitled cause on the 17th April, 1876, in favor of claimants, the defendants, by their Attorney-General, on the 14th day of July, 1876, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Ass't Attorney-General.

Filed July 15, 1876.

AT CHAMBERS.

Allowed:

C. D. DRAKE, C. J.

7 Court of Claims.

WHITE & MONTGOMERY
vs.
THE UNITED STATES. } No. 6349.

Findings of fact.

This case having been heard before the Court of Claims, the court upon the evidence finds the facts to be as follows:

I. That in the year 1865, & at the time of the transactions herein-

after stated, the said White being a citizen of New Orleans in the State of Louisiana & the said Montgomery being a citizen of Trenton, in the State of New Jersey, were engaged as copartners doing business in said New Orleans under the firm & style of Montgomery & White.

8 That on the 26th day of June, 1865, the petitioners at New Orleans, in the State of Louisiana, under the act of 2d July, 1864, & the Treasury regulations made in pursuance of said act and dated May 9, 1865, sold to O. N. Cutler, purchasing-agent of the Treasury, one hundred & one bales of upland cotton brought into New Orleans from States in insurrection; and on the 26th June, 1865, the said Cutler, as agent as aforesaid, resold to the petitioners 76 bales of said cotton, leaving in possession of the United States 25 bales of said 101 bales.

The said 25 bales of cotton were sold by the United States, & the net proceeds thereof, amounting to the sum of $3,443.50, were paid into the Treasury.

9 That at the time of the sale & resale above stated the petitioners and said Cutler had no knowledge of the proclamation of the President dated 24th of June, 1865.

And the court find that said petitioners are entitled to recover of the United States the said sum of $3,443.50, & judgment is rendered therefor.

And upon the foregoing findings of fact the Court of Claims decides as—

Conclusion of law.

The Treasury agent in New Orleans having control and possession of the claimants' cotton brought in from the insurrectionary district, had no authority on the 26th June, 1865, to retain the same or one-fourth

10 thereof, nor to exact from the owners a payment equivalent to one-fourth of its value under the act 2d July, 1864 (13 Stat. L., p. 375), and the owner should recover back the payment so exacted, it having been paid over to the defendants and being now in the Treasury.

By the court.

Filed March 20, 1876.

11 Court of Claims.

WHITE & MONTGOMERY *vs.* THE UNITED STATES. } No. 6349.

The claimant requests the court to find the following additional fact:

That during the enforcement of said regulations no cotton subject thereto was allowed to be shipped to New Orleans except such as was consigned to the said Cutler, purchasing-agent of the United States.

E. & A. C. JANIN,
Attorneys of Claimant.

Upon the foregoing request the court makes the following order, to wit:

Allowed.

Filed March 23, 1876.

12 In the Court of Claims.

WHITE & MONTGOMERY
vs.
THE UNITED STATES. } 6349.

The Attorney-General, on behalf of the United States, requests the court to find the following additional facts:

I. The one hundred and one (101) bales of cotton reached New Orleans by the steamer Nina Simons on the 23d of June, 1865.

II. Ninety-three bales were marked "M. C.," and eight various.

III. The seventy-six (76) bales were returned free from all fees and internal-revenue taxes.

THOMAS SIMONS.
Assistant Attorney-General.

Filed March 23, 1876.

13 Upon the foregoing requests the court makes the following order, to wit:

Allowed.

14 In the Court of Claims.

JAMES A. WHITE AND AUGUSTUS R. MONTGOMERY
vs.
THE UNITED STATES. } No. 6349.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General for the defendants for the allowance of an appeal, as filed in the clerk's office July 15, 1876, and of the order of the chief justice of said court, allowing the same; of the findings of fact by the court, and the conclusion of law thereon; of the requests of claimant and defendants for additional findings of fact, and the rulings of the court thereon.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this ninth day of October, A. D. 1876

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

(Indorsement on cover:) No. 524. The United States, appellants, vs. James A. White & Augustus R. Montgomery. Court of Claims. Filed 14th October, 1876.